

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000021-001 DT

08/29/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

LISA B BARNES

v.

THOMAS ANDREW DURETTE (001)

NEAL W BASSETT

PHX CITY MUNICIPAL COURT  
REMAND DESK-LCA-CCC  
FINANCIAL SERVICES-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #6092200

Charge: 1. DUI-LIQUOR/DRUGS/VAPORS/COMBO  
3. EXTREME DUI-BAC .15 OR MORE

DOB: 11/30/58

DOC: 11/15/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on July 23, 2003. This Court has considered and reviewed the file from the Phoenix City Court, and the excellent Memoranda submitted by counsel.

The issue presented in this case is the failure of the trial judge to inform Appellant of the constitutional rights he gave up by submitting his case to the court for a determination on the Docket Code 513

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police reports, and the waiver of his right to a jury trial, and to submit other evidence, or testify himself. Both parties are in agreement that the trial court erred by failing to advise Appellant of all rights he gave up by submitting the case to the court for determination.

Both parties also agree that a submission to the court on stipulated evidence is tantamount to a guilty plea, and Arizona law requires a trial judge to advise a criminal defendant of all rights that are waived, as with a guilty plea.<sup>1</sup>

This Court determines that the appropriate remedy is to remand this matter back to the trial judge for a hearing to determine whether the Appellant was aware prior to or at the time of the submission to the court of the possible range of sentence and those rights enumerated in State v. Avila.<sup>2</sup>

If the trial judge is able to find that Appellant was aware of all of these rights, then the trial judge should make findings on the record, subject to appellate review by this court.

On the other hand, if the trial judge concludes that Appellant did not knowingly, intelligently, and voluntarily waive the constitutional rights referred to in Avila, then the trial court shall make specific findings to that effect, and vacate the judgment of guilt and sentence imposed and grant a new trial pursuant to Rule 24.1, Arizona Rules of Criminal Procedure.

IT IS ORDERED remanding this matter back to the Phoenix City Court, with instructions to hold a hearing as described in this opinion, to make findings, and to proceed to enter judgment to grant or deny Appellant a new trial.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>1</sup> State v. Crowley, 111 Ariz. 308, 528 P.2d 834 (1974).

<sup>2</sup> 127 Ariz. 21, 24-25, 617 P.2d 1137, 1141 (1980).